IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODG) NO. 908 OF 2006

Biomedicon Systems India Pvt. Ltd.] .. Petitioners

Versus

1. State of Maharashtra & 5 ors.] .. Respondents

ALONGWITH

WRIT PETITION NO. 1198 OF 2006

M/s. Instromedix (India) Pvt. Ltd.] .. Petitioners

Versus

1. State of Maharashtra & 4 ors.] .. Respondents

Mr. Virag V. Tulzapurkar, senior counsel with Ms. Neeta Rajda i/b DSR Associates for the petitioners.

Mr. C.J. Sawant, senior counsel, with Mr.V.M. Phal, AGP, for respondents No.1 and 2.

Mr. Sanjay Kher with Amit Shroff for respondent No.3.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 03RD MAY, 2006

P.C. :

. Both the Petitions are being disposed of by this common order. In both the Petitions, the petitioners are aggrieved by the action of State of

Maharashtra in awarding a contract for supply of 20 Ventilators to Hospitech. Alongwith the petitioner, the respondents No.3, 4, 5 and 6 had submitted their tender documents. Respondent No.6 did not participate in the demonstration and consequently, their tender was not considered. What remained in the field, therefore, were the tenders of the petitioner and respondents No.3 to 5. An Expert Committee was appointed. That Expert Committee recommended the petitioner herein and respondent No.4. Hospitech, respondent No.3, being aggrieved represented to the Finance Secretary and others that the Ventilators supplied by them were being used in various Government hospitals and that respondent No.2 itself had placed orders. That, once respondent No.2 had itself found that machines supplied by respondent No.3 were responsive, it was not understood as to how the tender of respondent No.3 could be held to be non responsive. The matter was placed before the Purchase Committee constituted by respondent No.1. The Purchase Committee noted, amongst others, that the Expert Committee had not addressed itself to the correct issue and apart from that, also noted that the Ventilators to be supplied by the petitioners were more than the weight in terms of the tender documents. The Purchase Committee thereafter directed a second Expert Committee to be appointed. The minutes record that the

Committee also had discussions with one of the Members of the previous Expert Committee. Accordingly, a second Expert Committee was constituted which recommended respondent No.3 as meeting the requirements and being the lowest amongst the tenderers.

2. The petitioners have approached this Court on the ground that once the first Expert Committee had selected the petitioners, it was not open for the respondent No.1 to have appointed another Expert Committee. This, it is submitted, is clearly arbitrary and consequently, that action has to be set aside. It is secondly submitted that the Ventilators to be supplied had to be both for adults, paediatrics, as well as neo-natals. It is pointed out that insofar as Hospitech is concerned, their equipments did not meet the requirement of neo-natals and consequently, the same ought to have been rejected. Respondent No.3 has placed on record, the various Institutions to whom they have supplied the machines and also documentary evidence to show that they have been used for neo-natals also. The Expert Committee, after considering the various parameters, held that the equipments supplied by respondent No.3 could also be used for neo-natals. It is no doubt true that petitioners had brought to our attention the material issued which showed that it could

be used for paediatrics weighing atleast 10 kgs. In other words, it was sought to be pointed out that this could not be meant for neo-natals who are basically premature children or new-born young children. Whatever be the position, once an Expert Committee has gone into the issue and there was material before the Expert Committee and apart from that, the respondent No.3 has been supplying the very Ventilators which have been used for all purposes including adults, paediatrics and neo-natals, it is not for us to sit in judgment over the decision of the Expert Committee.

3. Apart from that, on behalf of respondent No.1, the learned counsel has placed on record before us, the communication received by the suppliers VersaMed dated April 23, 2000. It is pointed out therein that as soon as the L/C was advised and funds were received and credited into the account in the United States, the freight forwarders were advised to lift the material on 18th April itself and they collected their consignment from their godown on the morning of 20th April. In other words, though this Court had directed respondent not to act on the same, even before the communication of this order, the moneys of respondent No.1 have already been paid to VersaMed and they have despatched the said equipments.

4. In our opinion, considering all these factors, we do not think this to be a fit case where this Court should exercise its extra ordinary jurisdiction. In the light of that, we do not find any merit in both the Petitions which are consequently dismissed.

5. Learned counsel applies for stay of the order. We do not find any cause for staying the order as the petitioners in both the Petitions did not meet the necessary requirement of weight.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]